

Freedom of Information Act 2000 (Section 51)

Information notice

Date: **17 June 2019**

Public Authority: **The Cabinet Office**

Address: **70 Whitehall**
London
SW1A 2AS

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish her with any information she requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –

(a) has received an application under section 50, ...

she may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

1. The Commissioner has received an application under section 50 for a decision whether a request for information made by [redacted] (the complainant) of [redacted] to the Cabinet Office on 28 September 2018, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of complaint

2. On 28 September 2018, the complainant wrote to the Cabinet Office and requested information in the following terms:

"Please may I see the contents of the file PREM 19/3824 concerning Brian Nelson, public interest issues and protection of intelligence sources."

3. The Cabinet Office provided its response on 29 October 2018. It confirmed that it held the requested information but was withholding it under sections 23(1) and 41(1) of the Act.
4. The complainant requested an internal review on 29 October 2018. The Cabinet Office provided the outcome of its internal review on 20 November 2018. It upheld its reliance on sections 23 and 41 to withhold the information.
5. On 20 November 2018, the complainant contacted the Commissioner to complain about the way his request for information had been handled.
6. On 30 November 2018, the Commissioner wrote to the Cabinet Office to advise that she had accepted the complaint for investigation. The Commissioner made clear that the Cabinet office should be prepared to provide its submissions once a case officer is allocated, stating:

"The Commissioner would emphasise that since the public authority will have already had two opportunities to consider and respond to the request (initial response and internal review) she will expect a public authority to be fully familiar with the matter and clear as to the position by the time it is contacted by the assigned ICO case officer. Any and all necessary checks and enquiries (including obtaining views and representations from any interested third parties) should have been carried out prior to the public authority responding to the request and will certainly need to have been completed by the time that the assigned case officer requests a detailed submission."

*The public authority will be given sufficient time, normally up to a maximum of 20 working days, to provide any withheld information and supporting submissions to the Commissioner at the point that these are requested by the case officer. No information need be provided to the ICO until such contact is made. However, the Commissioner would emphasise that she will expect the public authority to have used the time since receipt of this correspondence to have thoroughly reviewed its handling of the request such that it is **fully prepared and ready** to provide its detailed and final submissions to the Commissioner when these are asked for. The public authority should already be clear and confident in its position as regards the exemptions applied and the respective public interest arguments if relevant.*

The Commissioner will provide a public authority with one opportunity to justify/confirm its position. It is therefore important for a public

*authority to have completed any outstanding work in the matter **prior** to being contacted by the assigned ICO case officer. Should the public authority consider, either as a result of reviewing its response or because of the passage of time, that the requested information can now be disclosed to the complainant, it should provide the information to the complainant without delay and please notify the ICO accordingly."*

7. On 11 April 2019, the Commissioner wrote to the Cabinet Office to confirm the scope of the investigation and requested the Cabinet Office's submissions. The Commissioner requested the Cabinet Office provide its submissions by the close of business on 14 May 2019.
8. On 20 May 2019, the Commissioner wrote to the Cabinet Office to request its submissions. The Commissioner advised that if the Cabinet office's submissions were not received by the close of business on 31 May 2019, she would proceed directly to serving an Information Notice.
9. To date, the Commissioner has not received any engagement from the Cabinet Office with regards to this case.

Information required

10. In view of the matters described above the Commissioner hereby gives notice that in the exercise of her powers under section 51 of the Act she requires that the Cabinet Office shall, within 30 days of the date of this notice, furnish the Commissioner with its full response to her letter of 11 April 2019.

Failure to comply

11. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

Right of appeal

12. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

13. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Signed

Elizabeth Hogan
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF